

SECTION 501(r) PROPOSED REGULATIONS

The Patient Protection and Affordable Care Act (ACA) added Section 501(r) to the Internal Revenue Code. Section 501(r) imposes four additional requirements on hospital organizations to maintain tax-exempt status:

- (1) a **community health needs assessment (CHNA)** to be conducted every three years;
- (2) adoption of a **written financial assistance policy** and a policy relating to emergency medical care;
- (3) **limitations on the amounts a hospital charges to individuals eligible for financial assistance for emergency or other medically necessary care**; and
- (4) **limits on engaging in extraordinary collection actions** before making reasonable efforts to determine an individual's eligibility for financial assistance.

A hospital organization must meet each of the requirements with respect to every hospital facility that it operates in order to maintain the hospital facility's tax exempt status under Section 501(c)(3). The provisions of Section 501(r) became effective for tax years beginning after March 23, 2010, except for the CHNA requirement, which is effective for tax years beginning after March 23, 2012.

Subsequent to the enactment of Section 501(r), the Internal Revenue Service (IRS) issued several pieces of guidance.

- In June 2010, the IRS issued Notice 2010-39, which solicited comments regarding the application of the additional requirements imposed by section 501(r).
- In February 2011, the IRS released a revised Schedule H to Form 990, along with revised Instructions to Schedule H.
- Additionally, in July 2011, the IRS released Notice 2011-52, which solicited comments from the public regarding the CHNA requirement under Section 501(r).

At Issue

On June 22, the IRS released long-anticipated Proposed Treasury Regulations (<https://www.federalregister.gov/articles/2012/06/26/2012-15537/additionalrequirements-for-charitable-hospitals>) (hereinafter regulations or proposed regulations) with respect to three of the new requirements under Section 501(r). The three requirements relate to a hospital facility's financial assistance policy (FAP) and to individuals who are, or may be, FAP-eligible. The proposed regulations contain a number of significant issues and hurdles for tax-exempt hospital organizations and facilities, including the following:

- The proposed regulations and the preamble are extremely detailed, and offer little flexibility for a hospital to comply with Section 501(r).
- The proposed regulations do not address the CHNA requirement or the consequences to a hospital organization and/or a hospital facility of failing to meet Section 501(r) requirements.
- A hospital's paperwork burden will increase as a result of the proposed regulations, which require a hospital facility, at a minimum, to implement an FAP, an FAP application form and instructions, and a plain language summary of the FAP. Each of the foregoing policies and forms must be in the language of one or more minority populations in the community served by the hospital facility. In addition, a hospital must have an emergency medical care policy, as well as multiple other written materials necessary to document all the determinations a hospital must make pursuant to new procedures mandated by the regulations.
- The regulations allow a hospital facility to select from only two methods for calculating amounts generally billed to individuals with insurance (AGB), both of which require a hospital facility to include amounts paid under Medicare fee-for-service. Once the hospital has selected a method, it remains locked into that method indefinitely.
- Despite urging from the hospital field to the contrary, the proposed regulations classify reporting to credit agencies as an extraordinary collection action.
- The proposed regulations prescribe overly detailed and burdensome procedures that a hospital facility must follow before its efforts to determine an individual's FAP eligibility are deemed reasonable, which procedures will likely require changes to a hospital's established billing and collection policies even if those procedures are effective.
- The proposed regulations render a hospital liable for the actions of debt collection agencies and require a hospital to enter into binding agreements with debt collection agencies to restrict and control the collection actions of the agency.

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